APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,300	04/13/2001	David Michael Kimble	50P3984.01	4749

36738 7590 06/18/2008	EXAMINER
ROGITZ & ASSOCIATES	HUYNH, SON P
750 B STREET	

	ART UNIT	PAPER NUMBER
SUITE 3120	2623	
SAN DIEGO, CA 92101		

	MAIL DATE	DELIVERY MODE
	06/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte DAVID MICHAEL KIMBLE

_____

Appeal 2008-0519
Application 09/835,300
Technology Center 2600

_____

Decided: June 18, 2008

_____

Before JOSEPH F. RUGGIERO, ROBERT E. NAPPI,
and KARL EASTHOM, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Final Rejection of

claims 114-117. Claims 1-113 have been canceled. (Br. 2). We have

jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellant's claimed invention relates to a method and system for generating a video-on-demand (VOD) event. (Spec. 4).

Claim 114 is illustrative of the invention and reads as follows:

114. A method for providing video-on-demand, comprising:
   using a TV system to present to a user's Web browser a list of links, each link corresponding to a respective piece of television video-on-demand;
   receiving a selection of a link;
   in response to the selection, sending a protocol file to the TV system, the protocol file including a TV channel corresponding to the video-on-demand associated with the selection and a size and location of a video layer within a markup language layer; and
   causing a channel tuner of the TV system to tune to the TV channel corresponding to the video-on-demand associated with the selection.

The Examiner relies on the following prior art references to show unpatentability:

Fries	US 6,317,885 B1	Nov. 13, 2001
Schumacher	US 6,757,907 B1	June 29, 2004
Zigmond	US 7,076,792 B2	Jul. 11, 2006

Claims 114-117 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fries in view of Schumacher and Zigmond.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs and Answer for the respective details. Only those arguments actually made by Appellant have been considered in this decision. Appellant argues claims 114-117 as a group and focuses on independent claim 114 (App. Br. 3-9). Therefore, we select claim 114 as representative of the group. Arguments which Appellant could have made

but chose not to make in the Briefs have not been considered and are deemed to be waived. 37 C.F.R. § 41.37(c) (1) (vii).

ISSUE

The issue is whether the Examiner erred in determining that the collective teachings of Fries, Schumacher and Zigmond meet claim 114.

FINDINGS OF FACT (FF)

1. Appellant's disclosed system transmits data parameters in a protocol file, identified as a Session Description Protocol ("SDP") file, to a recipient's television system to specify, among other things, the size and location of a media on demand (MOD) television broadcast 270 layer within a Hyper Text Markup Language (HTML) layer 260. (*See* Figs. 6b-6d, Spec. 19: 16 to 21:16).

2. In Zigmond's system, "background video image 210 is incorporated into the foregoing HTML page along with HTML image 220 for display on video display 200." (Col. 3, ll. 61-64, Fig. 2). The video includes broadcast TV for display on a "full-screen TV" (col. 8, l. 3), "home entertainment system" (col. 4, l. 48), or otherwise generic television using a set-top box (col. 2, ll. 23-37; col. 3, l. 59-67).

3. Web authors in Zigmond's system provide TV tags transmitted in the HTML page to control the relative positions of the background image and the video image, the size of the image, and the channel of TV broadcast video (abstract, col. 2, l. 55 to col. 3, l. 11; col. 5, l. 43 to col. 6, l. 14; col. 7, ll. 33-55). "Like other types of HTML tags, TV tags can include associated attributes. For TV tags, these attributes include channel number or network

designation, image width, image height, 'full screen' (i.e., ignore width and height), input source, z position, and image transparency." (Zigmond, col. 5, ll. 47-52).

    4. Zigmond's z attribute controls the apparent relative positions of a background or immersed television content with respect to an HTML layer as follows:

> The relative position of the TV object is determined using z-ordered (three dimensional) cascading style sheets. As is known in the art, cascading style sheets allow HTML authors to include typographical information to define how a Web page should appear. The present invention makes use of a z attribute supported by cascading style sheets to determine the apparent relative positions of background television and overlaying HTML content. To establish broadcast television as background, the z attribute of the TV tag is, in one embodiment, set to "Z= - 1."

(Col. 5, ll. 58-67).

    5. Fries's server 46 provides, in response to user selections, Internet content pages rendered on HTML pages having meta-data for each page, allowing the display of the pages on a television (col. 3, l. 66 to col. 4, ll. 28). "Each page image consists of a single frame MPEG2 video sequence. . . . The meta-data for each page describes the structure and contents of the page image." (Col. 4, ll. 20-24). A link that automatically or otherwise causes a set-top box to tune immediately or later to a channel providing video, including pay-per-view video, can be provided as or supported by meta-data in any HTML page and (col. 18, l. 6-42).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). "[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore,

> 'there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

"The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Leapfrog Enter., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (quoting *KSR,* 127 S. Ct. at 1739).

ANALYSIS

Appellant first disputes the Examiner's finding that Zigmond teaches the claim 114 limitation: "a protocol file including a TV channel corresponding to the video-on-demand associated with the selection and a size and location of a video layer within a markup language layer." (App.

Br. 4-9, Ans. 6). More specifically, Appellant argues that columns 2-4 of Zigmond do not mention video, or any portion within a page being dedicated to video. (App. Br. 4-5). We disagree. We find that Zigmond's system provides a television video layer 210 within the markup language (HTML) layer 220 (Abstract, Figs. 2-3, FF 2-4, col. 2, ll. 63-67, col. 3, ll. 59-67, col. 4, ll. 21-29). For example, Figure 3, described at column 4, depicts "a system 300 for blending a graphic overlay window with a background video image . . . . [which] might represent a television program or other cable, broadcast, satellite, or graphic presentation." (Zigmond, col. 4, ll. 30-37).

Appellant also argues that Zigmond does "not teach anything about a *location* of a video layer within a markup language layer." (App. Br. 5, *see also* App. Br. 8, Reply Br. 4). This dispute appears to be over the Examiner's determination that Zigmond's z position attribute corresponds to the claimed "protocol file includes . . . a . . . location (interpreted as position, z position) of a video layer (TV image) within a markup language layer." (*See* Ans. 9).

We concur with the Examiner's determination that Zigmond's z position attribute corresponds to the disputed location element (FF 3, 4). Appellant's statement that "'width' and height'. . .are nowhere said to be in any relationship with a coordinate system" (App. Br. 4-5) not only is not commensurate in scope with the claim because no coordinate system is claimed, but the statement does not directly address the Examiner's determination that Zigmond's disclosed z attribute corresponds to the claimed *location* element.

We find that the z attribute specifies the apparent position or location of the markup layer in relation to the television video (FF 3, 4). In Zigmond,

a negative z value renders the whole television video image as overlaid by the HTML markup layer (FF 4). Our finding and determination are consistent with Appellant's Specification which states that the disclosed Figure 6D embodiment "*represents a MOD or VOD session where the video layer is positioned over the entire the HTML layer*." (Spec. 21:5-6)(emphasis added). "The concepts of 'background' and 'overlay' are not physical, but refer instead to the apparent positions of displayed images." (Zigmond, col. 7, ll. 13-15)).

We also determine, as the Examiner did, that Zigmond's markup language layer (HTML) TV tags containing the z attribute, and similarly, containing image height and width, and TV channel attributes, for rendering a displayed TV broadcast in a Web page, constitute a protocol file including a TV channel, size and location in the manner claimed (*see* col. 3, ll. 47-67, col. 5, ll. 43-52, FF 3-4, Ans. 6, 9). Therefore, we also are not persuaded by Appellant's argument that the isolated passage at Zigmond, column 2, lines 4-11 (specifying position, size etc., attributes within tags for elements in a document) refers only to the size and location of text fonts (App. Br. 4). We find that the passage generically refers to tags and attributes specifying video image location and size, which a TV object or motion picture also requires (*see* FF 3, 4; see also n. 1).[1] Consequently, we are not persuaded by

---

[1] We also note that Zigmond's image 220 (Fig. 2), which may include video "motion pictures," is blended with a TV video 210 by using transparency information (Zigmond, col. 2, ll. 45-47; col. 4, ll. 21-29). We find such an image 220 as depicted in Fig. 2 at the upper left-hand corner necessarily requires or suggests "a protocol file including . . . a size and location of a video layer within a markup language layer" in order to create the disclosed different levels of transparency involved in the two areas 220 and 210. We

Appellant's related conclusory statement that columns 3 and 4 do not disclose "a protocol file that includes a TV channel of a selected link and a size and location of a video layer within a markup language layer" (App. Br. 5).

Appellant also argues that "in none of the relied-upon portions of Zigmond et al. is it taught that a protocol file is sent to a TV system." (App. Br. 5). As indicated *supra*, the Examiner determined that Zigmond's "HTML protocol with tags" constitutes a protocol file (Ans. 9), but the Examiner asserted Fries for a teaching of sending the protocol to a TV system in response to a link selection (Ans. 9-10). We generally agree with the Examiner, but we also determine that Zigmond cumulatively teaches sending a protocol to a TV system in the manner claimed. Zigmond discloses the protocol file as discussed above (FF 3). Further, contrary to Appellant's assertion, we find that Zigmond's tags, created by a Web content provider, are sent in an HTML document to a television system such as a set top box, full screen TV, generic television, or entertainment system, etc., for display (FF 2-3).

We also determine that Zigmond, at a minimum, at least suggests all the claim limitations. Zigmond, disclosing "surfing the Net" (col. 1, l. 47)[2] with a TV system (as discussed *supra*) reasonably teaches the first two steps of "using a TV system . . . to present . . . a list of links, each link corresponding to a respective piece of television video on demand; [and]

also determine, under an alternative claim interpretation, that the claim does not require "a video layer" to correspond to the "video-on-demand."
[2] Zigmond's system specifically incorporates the prior art methods and functions such as "surfing" described generally at column 1 and Figure 1 (col. 5, ll. 9-11).

receiving a selection of a link" as claimed. Similarly, Zigmond, at col. 7, ll. 33-55 reasonably teaches the last step of "causing a channel tuner of the TV system to tune to the TV," by disclosing that "users execute hyperlinks . . . by selecting them with a mouse or other pointing device . . . [and] [i]f the selected hyperlink includes a TV URL . . .then the view object examines a channel attribute of the TV URI to determine which channel should be displayed."   Or, after a link selection and reception by surfing, a hyperlinked TV channel is selected (i.e., tuned) automatically upon uploading of a selected Web page that is synchronized with respect to the TV broadcast (*id.*). In other words, a selection and reception (obtained by surfing thereby meeting the first two steps) of one of Zigmond's links to a Web HTML based page having TV attributes as protocols ultimately causes tuning to the channel link in the TV attribute, thereby meeting the last claim step, either by pointing or automatically. Alternatively, even if displaying the selected Web based TV channel video (*see* Fig. 7, FF 2) does not constitute "tuning" as claimed, Fries discloses such tuning as the Examiner determined (*see* FF 5, Ans. 10).

Turning to the claimed third step, we determine that selecting a TV channel or a Web page having a TV channel constitutes the claimed "video-on-demand" because the selected or demanded material is broadcast media as opposed to being "purchased . . . media in a permanent format" (Spec. 3: 4). Thus, our determination is consistent with Appellant's Specification (*see* Spec. 3: 1-8). Finally, Zigmond also teaches the third claimed step of sending a protocol file in response to a link selection by surfing as discussed *supra* (*see also* FF 2-4).

We also concur with the Examiner's cumulative finding that Fries discloses sending protocols to a TV system in response to a link selection (Ans. 9-11, FF 5). Appellant makes several arguments regarding this finding (App. Br. 5-9). The basis for Appellant's arguments appears to be that Fries discloses two different types of video: 1) "video information representing Web pages, not <u>television</u> VOD as claimed," (App. Br. 6), and 2) video from a "video channel" (App. Br. 8).[3] Respectively regarding these two different video types, Appellant states: "the Office Action persists in failing to grasp that the relied-upon metadata and PSI data for the HTML pages [video type 1] are isolated in Fries et al. from the relied-upon tuning of the set-top box to a video channel [video type 2] in column 18." (App. Br. 8) (*See also* App. Br. 6-7).

The video types thus separated, Appellant parses each one for its asserted shortcomings (i.e., asserting no "video layers" or "video link" in the type 1 Web page, and no location, or position data in a mark-up layer for the type 2 video channels (App. Br. 5-6)), and concludes that Fries does not

---

[3] Appellant's statements regarding the first type of Web page image video are difficult to understand. Appellant argues that Fries's Web pages both do and do not include video information (*see* App. Br. 6, second full paragraph – compare "video information representing Web pages" with "displaying web pages and only web pages, without any video layers within them"). Contrary to Appellant's related conclusory assertions otherwise (App. Br. 7-8, Reply Br. 4), we find that Fries teaches meta-data constituting a protocol file including size and location data of video images in a Web page markup (HTML) layer. For example, button border and focus images (i.e., as opposed to text information) broadly constitute video (graphic) images (in an MPEG video sequence – *see* FF 5) that require such size and location information to create the page (*see* Fig. 6, col. 15, ll. 33-52; and generally cols. 21-22 (disclosing "COORDS" corresponding to the location/size of focus and button images)).

teach sending a protocol in response to a link selection (App. Br. 6), and also concludes that there is no suggestion to combine Fries with Zigmond and Schumacher (App. Br. 7).   We disagree.

As to sending protocol files in response to a link selection, Fries states: "For example, a new page might be displayed when *a link is selected*. The *video information includes meta-data or the like* associated therewith for providing information about the active location and the action to be taken upon selection thereof." (Col. 2, ll. 32-36 (emphasis added), *see also* FF 5). Therefore, we concur with the Examiner's statement as factually supported: "the protocol file (meta data and/or PSI data) must be sent to the TV system in order to render the display of the selected program element in response to user selection of a link on the web browser." (Ans. 10).

Further, Appellant's assertions (App. Br. 7) that Fries does not teach size and location protocol data for the second type of "video-on-demand" (VOD) video presupposes that the claim requires it. However, we determine, under one claim interpretation as indicated above (*see* n. 1 *supra*), that the claim only reasonably requires "size and location of *a video layer*" (i.e., the first type taught by Fries as implicitly admitted by Appellant), and, does not require such size and location data for the second type (i.e., video-on-demand). And, since Fries discloses a selectable link to a video-on-demand channel in *any* HTML page[4], such a page thereby

---

[4] We disagree with Appellant's assertion that the Examiner is "plain wrong" in finding that Fries's statement "'for any page, it is possible to include a link'" teaches the link as included in the category of meta-data (App. Br. 8-9 (citing Fries, col. 18 generally, and ll. 6-7, specifically), Ans. 4-5). Blair's description of the link includes (*see* col. 18, ll. 23-42) the following; an "ACTION URL" is created and "[a]t [page conversion time, this URL is

necessarily includes the disclosed pages having protocol file location and size attributes for a separate (first type) video layer (*see* FF 5, n. 3). Therefore, Fries, teaches the alleged missing claim elements.[5]

In other words, Appellant's parsing of Fries's video types does not distinguish the claim since the claim does not necessarily require "video-on-demand" and "a video layer" to constitute the same video data. Even if it does, Fries teaches sending protocols to a TV system as discussed *supra*, and further, Fries's asserted shortcomings do not defeat its combination with Schumacher and Zigmond as proposed by the Examiner. For example, Appellant's argument that since Fries does not teach video in a markup layer, or size and location defined by a protocol file, that "one would [not] be motivated to download something from Zigmond that Fries does not need" (Reply Br. 4) lacks the factual predicate regarding what Fries teaches. Regardless, even if Appellant is correct, the opposite conclusion is more reasonable; i.e., one would have been motivated to employ Zigmond to supply what Appellant asserts Fries is missing - protocol file size, location, and channel elements – in order to create predictably and beneficially a

---

recognized, and *meta-data for the page* indicate that the form query string should be submitted to the guide for processing." (Col. 18, ll. 31-32 (emphasis added)). Moreover, regardless of its characterization as meta-data, such a link reasonably constitutes protocol data in the manner claimed because it provides channel information to a pay-per-view television event (col. 18, ll. 18-22), i.e., video-on-demand. Appellant's related argument (App. Br. 8-9) that since pay-per-view must be paid for before a channel is caused to be tuned does not mean that the channel is not caused to be tuned in the manner claimed (*see* FF 5). Regardless, Zigmond's "currently available programs" (col. 18, ll. 17-22) also constitute video-on-demand.
[5] We also concur with the Examiner's determination that Fries teaches the claim steps as outlined in the Answer (Ans. 3-5, 10).

display of Fries's transmitted television video on a single HTML Web page for user convenience, as the Examiner determined (Ans. 6).

Appellant's further assertions that data is read from the Set Top Box (STB) (App. Br. 6) does not constitute evidence or a supporting argument that the data was not downloaded to the STB in response to selection of a link. Moreover, as noted above, Fries teaches sending a protocol file, such as meta-data embedded in an HTML page, in response to a user's selection of a link (*see* FF 5, n. 4 *supra*).

We also disagree with Appellant's argument that Fries and/or Zigmond do not teach a TV system. (App. Br. 9). Appellant appears to recognize that Fries teaches a TV system (*see e.g.* App. Br. 8, noting Fries's "tuning of the set-top-box"). We also find that the Fries system presents Web pages to a television system (FF 5) and "provides an interactive television system including a head-end having means for injecting video information into a transmission medium" (col. 2, ll. 19-21). Zigmond teaches a similar TV system (FF 2).

We also are not persuaded by Appellant's further statements (App. Br. 7, 9; Reply Br. 1-4) which we characterize as generally attacking, without supporting argument or evidence, the Examiner's reasons for combining the references.[6] Appellant has not presented a convincing or meaningful argument that persuades us of error in the Examiner's findings with which we concur that Schumacher suggests video-on-demand (VOD) (Ans. 5, App. Br. 9) and that Zigmond suggests the claimed protocol file of a video layer

---

[6] We also do not agree with Appellant's implied argument (Reply Br. 1-4) that the prohibition of attacking references individually as enunciated in *In re Keller*, 642 F.2d 413 (CCPA 1981) and *In re Merck & Co.*, Inc., 800 F.2d 1091 (Fed. Cir. 1986) is limited to the facts involved in those cases.

within a markup language (Ans. 6, *see* Reply Br. 4). Therefore, we concur with the Examiner's determination that it would have been obvious to modify Fries as taught by Schumacher and Zigmond to transmit immediate video-on-demand video with HTML images in the form of a single HTML page by selection of a link on the screen to improve the convenience to users (Ans. 5-6).

According to *Leapfrog*, if the combination of familiar elements according to methods known to the skilled artisan, such as the combination of familiar video types and protocols for dictating the location of images, videos or text, achieves a predictable result of rendering a video in a desired portion of a Web mark up page, it is likely to be obvious.

In view of the above discussion, since Appellant has not convinced us of error in the Examiner's determination, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of independent claim 114, as well as claims 115-117 not separately argued by Appellant.

CONCLUSION

We sustain the Examiner's rejections of claims 114-117. Accordingly, the Examiner's decision rejecting claims 114-117 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (1) (iv) (2006).

AFFIRMED

KIS

ROGITZ & ASSOCIATES
750 B STREET
SUITE 3120
SAN DIEGO CA 92101